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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 96-007

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. When a provision of the rule is being renumbered, the treatment clause of that provision should specifically refer to the renumbered provision as “ILHR.” For example, the treatment clause of SECTION 1 of the rule correctly refers to the renumbered provision as “ILHR 100.02 (16m).” However, the treatment clauses of SECTIONS 15, 17 to 19, 21 to 23, 25, 28 and 30 to 32 do not refer to the renumbered provision as ILHR. Appropriate corrections should be made.

b. SECTION 5 of the rule seeks to amend s. ILHR 140.001 (4), which does not exist. It appears that SECTION 5 should amend s. ILHR 140.001 (2) (a).

c. SECTION 6 of the rule seeks to amend s. ILHR 140.01 (1), which does not exist. Perhaps the SECTION should renumber s. ILHR 140.01 as s. ILHR 140.01 (1) and then amend it. In addition, to be consistent, it would appear that the phrase “under ss. 108.09 or 108.10, Stats.” should be inserted after the word “determination” in the first sentence of s. ILHR 140.01 (1).

d. SECTION 7 of the rule seeks to repeal and recreate s. ILHR 140.01 (2), which does not exist. Perhaps this SECTION of the rule should create s. ILHR 140.01 (2). The word “initial” should be inserted immediately preceding the word “determination” in the first sentence of s. ILHR 140.01 (2) (a). Also, in the first sentence, the word “such” should be replaced by the word “a.” The phrase “Postal Service” should not be capitalized. The usage of “Postal Service” should be reviewed throughout the rule. The word “will” should be replaced by the word “shall”

in the final sentence of par. (a). Finally, in the citation to s. 230.35 (4), Stats., “A” should be replaced by “a.”

e. Whether s. ILHR 140.01 (2) (b) is being recreated or just created, it is unnecessary to underline and strike-through material [s. 1.06 (5), Manual]. In addition, because three filing options are created, the phrase “any of the following” should be inserted before the colon in the first sentence and the three filing options should be set off as separate subdivisions. [See s. 1.03 (8), Manual.] Finally, the address of the central administrative office could be removed from the substantive provisions of the rule and placed in a note to the rule.

f. In s. ILHR 140.01 (2) (c), the subdivisions should end with a period, rather than a comma or semicolon or the word “and” or “or.” This facilitates insertion or deletion of subdivisions in the future without having to move the word “and” or “or” in the next-to-the-last subdivision [s. 1.03 (8), Manual]. The entire rule should be reviewed to ensure proper drafting of introductory material and subunits.

g. Section ILHR 140.02 uses the terms “agent” and “representative,” apparently to refer to the same person. Since s. ILHR 140.001 (2) (b) defines the term “representative” in terms of an attorney or agent, ch. ILHR 140 should make consistent use of the term “representative.”

h. The title of s. ILHR 140.04 should be underlined [s. 1.05 (2) (b), Manual].

i. In SECTION 11, the treatment clause may be stated simply as: “ILHR 140.05 is amended to read:”. Since the entire section is amended, and since the amendment to the title is indicated in the body of the rule, it is unnecessary to state in, the treatment clause, that the title is amended.

j. The treatment clause of SECTION 13 of the rule should read: “ILHR 140.06 (1) to (3) are amended to read:”.

k. The title of s. ILHR 140.11 should be underlined [s. 1.05 (2) (b), Manual].

l. Section ILHR 140.11 (3) does not seem to be a substantive provision of the rule and should be moved to a note. In the alternative, the subsection could be rewritten to provide definitive duties for parties. For example, parts of the subsection could be rewritten to provide that “parties shall remain available.” What happens if they do not remain available?

m. SECTION 24 of the rule should follow SECTION 31 of the rule. In addition, the reference to the Wisconsin Administrative Code in that SECTION should be deleted [s. 1.07 (2), Manual].

n. The first sentence of s. ILHR 140.13 should be rewritten to provide an affirmative duty substantially as follows: “All parties ~~are expected to~~ who are required to appear in person shall appear at the hearing location no later than the starting time listed on the notice of hearing.” Also the phrase “issue a dismissal” should be simplified by substituting “dismiss the appeal.”

o. SECTION 27 of the rule purports to amend s. ILHR 140.19 and its title. However, it appears that it is amending s. ILHR 140.17 and its title.

- p. The address information contained in s. ILHR 140.19 could be moved to a note.
- q. SECTION 29 of the rule purports to repeal s. ILHR 140.19 (1) (a) and (b). However, pars. (a) and (b) do not exist. Is the rule's intent to repeal s. ILHR 140.19 (1)?
- r. The title of s. ILHR 140.21 should appear without a strike-through [s. 1.05 (3) (c), Manual].
- s. It appears that s. ILHR 140.23 (4) could be moved from the substantive provisions of the rule and placed in a note.

4. Adequacy of References to Related Statutes, Rules and Forms

- a. What is the "statutory appeal period" identified in the second sentence of s. ILHR 140.01 (2) (a)? An appropriate cross-reference to the statutory provisions should be included.
- b. In s. ILHR 140.09 (4) (d), what "statutory reviewing body" is being referred to? An appropriate cross-reference to the applicable statutes should be included.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. In the description of s. ILHR 140.18 in the analysis, the word "to" should be inserted after the word "refers."
- b. Section ILHR 140.01 (2) (b) is confusing. The paragraph first seems to say that an interstate claimant may not file an appeal with an unemployment insurance office, a hearing office or the central office ["except for an appeal by an interstate claimant..."]. The paragraph then goes on to provide that an interstate claimant "may also" file a claim in the agent state. The paragraph should be rewritten to make the filing obligations of an interstate claimant more clear.
- c. In s. ILHR 140.01 (2) (c) 7., the word "will" should be replaced by the word "is."
- d. In s. ILHR 140.02, the phrase "unless or" is unnecessary and should be deleted. Also, the word "currently" should be deleted [s. 1.01 (9) (b), Manual]. Finally, the word "will" in the last sentence should be replaced by the word "may."
- e. In s. ILHR 140.04 (2), the phrase "of fact" should be inserted after the word "findings" and the phrase "of law" should be inserted after the word "conclusions." Finally, read literally, the last sentence of sub. (2) creates an absurd result, i.e., if the appeal is not late, the appeal must be dismissed. Perhaps the last sentence should read: "If the administrative law judge decides that the late appeal was late for a reason within the appellant's control...."
- f. In s. ILHR 140.05 (1), the word "that" should be inserted after the word "determining" in the second sentence.
- g. In s. ILHR 140.06 (4), a comma should be inserted after the word "consolidate." The phrase "issues involving" should be inserted before the word "more." Finally, should the issues

arising out of similar circumstances also involve the same parties, or will two or more cases involving different parties but similar circumstances be consolidated for a hearing? The rule should be clarified.

h. In s. ILHR 140.07 (2), the word “Prehearing” should be inserted before the word “Conferences” in the first and fourth sentences. In s. ILHR 140.07 (3), the word “hearing” should be replaced by the phrase “prehearing conference.”

i. In s. ILHR 140.09 (1) (b), the phrase “of this chapter” should be deleted since it is redundant. In s. ILHR 140.09 (4) (b), the word “contain” should be made plural.

j. In s. ILHR 140.10 (2) (intro.), the phrase “issue or” should be deleted. Also, in sub. (5), which hearing office is the “appropriate hearing office”?

k. In s. ILHR 140.10 (3), the phrase “administrative law” should be inserted before the word “judge” which appears after the comma in the third sentence.

l. In s. ILHR 140.11 (4), the phrase “had determined” should be replaced by the word “determines.” In addition, the subsection should be clarified to provide that it only applies if the appellant is scheduled to appear by telephone. Similarly, sub. (5) should be clarified to provide that it only applies if the respondent is scheduled to appear by telephone. Also, the phrase “shall have the right to” in the last sentence of sub. (5) should be replaced by the word “may.”

m. In s. ILHR 140.13, the reference to “ss. 108.09 (4) Stats.” should be replaced by a reference to “s. 108.09 (4), Stats.,”.

n. Section ILHR 140.16 (3) (a) should be amended so that the rule provision ultimately will read: “For the first finding under sub. (2), the department shall impose a suspension for 150 days.” The remaining paragraphs should be amended accordingly.

o. In the fourth sentence of s. ILHR 140.18 (1), the word “evidence” should be inserted after each use of the word “hearsay.”

p. In s. ILHR 140.12 (1), the phrase “all of the following occur” should not be deleted.

q. Section ILHR 140.21 (2) refers to “s. 140.20.” It appears that this should be a reference to s. ILHR 140.20, rather than to s. 140.20, Stats. The rule should be clarified. In addition, since SECTION 31 of the rule rennumbers s. ILHR 140.20 as s. ILHR 140.22, it appears that the reference in sub. (2) should be amended to read s. ILHR 140.22.

r. In s. ILHR 140.22, the notation “(4)” should be inserted before par. (c).

s. In s. ILHR 140.23 (3), the word “with” in the first sentence should be deleted.